



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,023	12/21/2001	Helmut Haning	Le A 34 980	8639

7590 08/19/2002

Jeffrey M. Greenman  
Vice President, Patents and Licensing  
Bayer Corporation  
400 Morgan Lane  
West Haven, CT 06516

EXAMINER

STOCKTON, LAURA LYNNE

ART UNIT

PAPER NUMBER

1626

DATE MAILED: 08/19/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

## Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
--------------------	-------------	-----------------------	------------------

EXAMINER
----------

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-20 are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-20 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

10/026,023  
40517

## DETAILED ACTION

Claims 1-20 are pending in the application.

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-13, 17 and 20, drawn to products, classified in class 548, subclass 181+.
- II. Claim 14, drawn to a method, classified in class 514, various subclasses.
- III. Claim 15, drawn to a method, classified in class 514, various subclasses.
- IV. Claim 16, drawn to a method, classified in class 514, various subclasses.
- V. Claim 18, drawn to a method, classified in class 514, various subclasses.

VI. Claim 19, drawn to a process, classified in class 548, various subclasses.

The inventions are distinct, each from the other because of the following reasons: Inventions of Group I and Groups II-V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product.

Inventions of Group I and Group VI are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different

process (MPEP § 806.05(f)). In the instant case, the process can be used to make other and materially different products.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the search required for Group I, for example, is not required for Group II, restriction for examination purposes as indicated is proper. Therefore, it would impose an undue burden on the Examiner and the Patent Office's resources to examine the instant application if unrestricted.

The above groups themselves are inclusive of patentably distinct subject matter. Accordingly, along with the election of one of the above groups, the following action is also taken.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species (e.g. Example, number, page number and structural depiction) from whichever group is ultimately elected, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Upon the election of a single disclosed species (e.g. Example, page number and structural depiction), a generic concept, inclusive of the elected species, will be identified by the Examiner for examination.

Moreover, whatever specific compound is ultimately elected, applicants are required to list all claims readable thereon from the elected group.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to

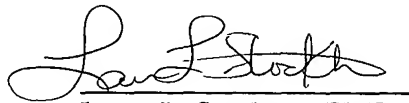
Application/Control Number: 10/026,023  
Art Unit: 1626

Page 7

Laura L. Stockton whose telephone number is (703) 308-1875. The examiner can normally be reached on Monday-Friday from 6:00 am to 2:30 pm. If the examiner is out of the Office, the examiner's supervisor, Joseph McKane, can be reached on (703) 308-4537.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

The fax phone numbers for the organization where this application or proceeding is assigned is (703) 308-4556.

A handwritten signature in cursive script, reading "Laura L. Stockton", written over a horizontal line.

Laura L. Stockton, Ph.D.  
Patent Examiner  
Art Unit 1626, Group 1620  
Technology Center 1600

August 16, 2002